

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

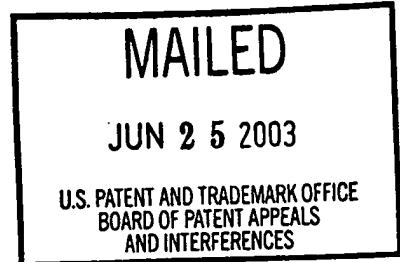
Paper No. 23

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Ex parte WILHELM ELSNER

Appeal No. 2003-0841  
Application No. 09/664,247



HEARD: March 26, 2003<sup>1</sup>

Before WINTERS, WILLIAM F. SMITH, and ADAMS, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision in an appeal under 35 U.S.C. § 134 from the examiner's final rejection of the claim pending in this plant patent application. We affirm.

**BACKGROUND**

The present invention relates to a geranium named Pendec. Pendec is a spontaneous mutation of "Pendred" and is asexually reproduced. Specification, page

<sup>1</sup> This appeal was heard in conjunction with Appeal No. 2003-0703, plant patent Application No. 09/267,559 and Appeal No. 2003-0704, plant patent Application No. 09/286,130. See Petition Under 37 CFR § 1.182, filed February 3, 2003, (Paper No. 15) and Request for Special Handling (Part of Paper No. 17). The three appeals have been decided concurrently.

1. There came a time when the owner of Pendec sought legal protection for Pendec in countries other than the United States. For example, appellant filed an application for a Community Plant Variety Rights (CPVR) Certificate/Plant Breeder's Rights (PBR) with the Community Plant Variety Office (CPVO) in Europe for Pendec on September 3, 1997 that was assigned reference number 97/0950. Application EU 97/0950 published on December 15, 1997 in the CPVO Official Gazette. Appellant admits that Pendec was sold in Germany in July of 1998. Reply Brief, page 1.

This plant patent application was filed on September 18, 2000, more than one year after the publication date, December 15, 1997, of EU 97/0950. The examiner has rejected the claim of this plant patent application under 35 U.S.C. § 102(b), concluding that EU 97/0950 is a printed publication within the meaning of this section of the statute. The examiner understood that the bare description of a claimed invention appearing in a printed publication published more than one year prior to the effective filing date of a patent claim is not a bar to the patenting of that claim if the printed publication is non-enabled, i.e., the disclosure of the publication "must be such that a skilled artisan can take its teachings in combination with his own knowledge of the particular art and be in possession of the invention." In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962). Examiner's Answer, Paper No. 13, page 3. The examiner concluded that EU 97/0950 is enabled or places the skilled artisan in possession of the invention since appellant has conceded that the claimed plant, Pendec, has been on sale or commercially available in countries other than the United States beginning in July of 1998.

Appellant's position is summarized at page 4 of the Appeal Brief (Paper No. 12) as follows:

The anticipation rejection in the present application has been characterized as based on the cited PBR application. According to the Examiner, the cited PBR application teaches every material element of the claim, despite its severe lack (or absence) of botanical information. The sale of a plant named Pendec outside the United States is used to show that the claimed subject matter was in the public domain more than one year prior to the application filing date.

The rejection is flawed in its reliance on a PBR application which does not disclose every material element of the claim and its attempt to circumvent 35 U.S.C. § 102(b) to reject a claim on an invention that may have been sold outside the United States.

Appeal Brief, (Paper No. 12), page 4.

## DISCUSSION<sup>2</sup>

In relevant part, 35 U.S.C. § 102(b) reads:<sup>3</sup>

A person shall be entitled to a patent unless -- ... (b) the invention was ... described in a printed publication ... more than one year prior to the date of the application for patent in the United States, ....

However, not every "description" of something in a printed publication will necessarily bar the grant of a patent containing claims to that something. As stated in In re LeGrice, 301 F.2d at 931, 133 USPQ at 367, "[t]he underlying concept on which the

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<sup>2</sup> The briefing in this appeal includes the Appeal Brief (Paper No. 12), a first Examiner's Answer (Paper No. 13) and the Reply Brief (Paper No. 14). At that point in time, the examiner re-opened prosecution and issued a new final rejection (Paper No. 16). Appellant requested that the appeal be reinstated and filed a Supplemental Appeal Brief (Paper No. 17). A second Examiner's Answer was entered (Paper No. 18). Appellant declined to file a second Reply Brief. See Paper No. 19.

<sup>3</sup> This provision of § 102(b) is separate from the "on sale" and "public use" clause of this section of the statute. While the examiner refers to public availability of Pendec in countries other than the United States in terms of "on sale," we will use terms such as "publicly available" to describe this aspect of the evidence relied upon by the examiner to make clear that the rejection is not based on the "on sale" or "public use" provisions of § 102(b).

courts permitted such a bar is that the description of the invention in the printed publication was sufficient to give possession of the invention to the public."

Thus, the issue to be resolved is whether the "description" of the claimed geranium Pendec in EU 97/0950 is sufficient to "give possession of the invention to the public." Appellant and the examiner agree that no amount of written description of the claimed geranium Pendec would allow one to recreate the plant. This is seen in that Pendec is biological material created by a spontaneous mutation. Given the vagaries of nature and genetics, all agree that it is improbable if not impossible to recreate Pendec from the parent plant.

Here, however, the examiner does not rely upon the written words of EU 97/0950 as evidence that the printed publication placed Pendec in the possession of the public. In addition, the examiner relies upon the fact that the claimed geranium Pendec was also available to the public more than one year prior of the filing date of this plant patent application. In determining whether the description of Pendec in EU 97/0950 gave possession of the claimed plant to the public, the examiner concluded that being able to physically possess Pendec due to its public availability met the LeGrice test.

We agree with the examiner that EU 97/0950 is a statutory bar since it gave possession of Pendec to the public more than one year prior to the filing date of this plant patent application by way of (1) public announcement of the existence of Pendec by its publication and (2) the admitted public availability of the claimed plant. Simply put, it is difficult to imagine how much more the public can be put in "possession" of a claimed plant than be told of its existence by way of a printed publication and then be able to physically possess the plant by holding it in one's own hand since it is publicly available. Our reading of LeGrice and the other cases appellant relies upon does not lead us to appellant's conclusion, i.e., a description in a printed publication can only put

a claimed invention in possession of the public if the public can recreate the claimed invention from scratch. Rather, physical possession of the claimed plant is sufficient.

Appellant questions the examiner's use of multiple events to establish a statutory bar under the § 102(b), i.e., a printed publication describing a "thing" and public availability of the "thing" described in the publication. Specifically, appellant argues:

There is some flexibility in the rule that only one reference may be used in an anticipation rejection. An additional reference may be used to prove that the primary reference discloses subject matter which is in the public's possession. MPEP § 2131.01. Pursuant to this exception, a secondary reference may be included in an anticipation rejection only when the primary reference in and of itself is an enabling disclosure. An additional reference may be used to show what the primary reference contains-- and not to supplement what the primary reference lacks. In both of *In re Samour*,[571 F.2d 559, 197 USPQ (CCPA 1978)] and *In re Donohue*,[766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985)] (each relating to patent applications on chemical inventions), an additional reference was relied upon to show that the subject matter of a primary reference was available to the public. Neither case stands for the proposition that an additional reference may be used to supplement a non-enabling disclosure of a primary reference.

Appeal Brief, (Paper No. 12), page 5.

Appellant's argument appears to be circular. Appellant first states that it is proper to rely upon an additional reference in making an anticipation rejection to establish that the subject matter described by the so-called primary reference is in the possession of the public. This is what the examiner has done in this case. However, appellant goes on to argue that a so-called secondary reference may be included in an anticipation rejection "only when the primary reference in and of itself is an enabling disclosure." This latter statement is not understood since by definition the secondary reference is needed because the primary reference is not considered to be an enabling reference. If the primary reference was an enabled reference, one would not have to resort to so-called secondary references to establish that the "thing" described by the primary reference is enabled.

In our view Samour and Donohue are relevant in considering the present issue in that they provide legal support for the proposition that additional evidence may be relied upon to establish that a so-called primary reference is in fact enabled. However, we do not read Samour or Donohue as holding that the additional evidence to be used in establishing that the primary reference is enabled is limited to printed publications as opposed to actual objects that are publicly available.

Appellant argues that an anticipatory reference must describe "every material element of the claim." See, e.g., Appeal Brief, page 6. We agree. Appellant characterizes the primary reference in Samour as teaching every material element of the claimed compound by depicting the structural formula of the claimed compound. Appeal Brief, page 6. Appellant apparently views description of a chemical compound by its structural formula in a printed publication to be different from the description of a plant by name in a printed publication. We do not. A chemical compound is a physical substance just as a plant. In order to identify a chemical compound, workers in the field use words, e.g., ethanol, or structural formulas, e.g.,  $\text{CH}_3\text{CH}_2\text{OH}$ . EU 97/0950 describes a plant using words, the name Pendec, as well as a brief taxonomic description, similar to a structural formula. A printed publication which simply describes "ethanol" or " $\text{CH}_3\text{CH}_2\text{OH}$ " does not necessarily describe how to obtain the compound which meets that description, just as a printed publication which describes the geranium Pendec, either by name or the most detailed taxonomic description, may not describe how to obtain that plant. Rather, workers in the respective fields must rely upon publicly available knowledge and their ordinary skill in order to obtain the chemical or the plant. Chemical compounds can be synthesized. That endeavor may be simple or complex. In Donohue and Samour, the USPTO provided sufficient evidence to conclude that a

worker in the relevant field would be able to obtain the compounds in dispute by way of synthesis using publicly available knowledge and routine skill.

While it is agreed that it is improbable if not impossible to recreate Pendec from the parent plant, the public is put in possession of Pendec just as assuredly as the chemical compounds in Donohue and Samour, if not more so by its public availability. This is seen in that the evidence relied upon by the USPTO in Donohue and Samour only provided instructions to one of ordinary skill in the art as to how to obtain the claimed compounds. One need not be concerned about "making" Pendec since appellant admits that it was publicly available in the relevant time frame. Again, physical possession of a claimed "thing" resolves any question that one can actually recreate the "thing" by way of instructions and knowledge contained in printed publications such as those relied upon in Donohue and Samour.

We note that the evidence relied upon by the examiners in Samour and Donohue established a constructive "possession" of the claimed compounds, not an actual "possession." If enablement of a reference can be established by evidence establishing that one could constructively be placed in possession of the claimed subject matter, it stands to reason that actual possession should also provide enablement. One should not have to reinvent the wheel if the wheel is publicly available.

Appellant argues that a plant cannot be reproduced from a description of the plant in a printed publication, relying upon the declaration filed under 37 CFR § 1.132 by Dr. Richard Craig. Appeal Brief, pages 9-11. That is not in issue as we agree that it is improbable if not impossible to recreate a plant from a written description of the plant.

Appellant also argues:

The LeGrice opinion does not directly address enablement of the printed publications on the claimed rose plant based on any other source, such as public availability of the plant.

However, implicit in LeGrice is that a publication describing a plant and a source to obtain that plant is not prior art to a plant patent application on that plant. The publications at issue in LeGrice included a national British publication on roses which disclosed the source of the rose plant at issue including the breeder's name and location and a catalog showing the rose plant. Although not specifically stated in LeGrice, the catalog indicated commercial availability of the rose plant. One skilled in the art, a plant breeder, could have determined the name and source of the rose plant and tracked down the rose plant. Despite availability of the rose plant (evidenced by the catalog), the court held the two publications to be incapable of placing the rose plant in the public domain. As should be true in this present application, the public use or sale of the rose plant outside the United States (such as via the catalog) were not of concern to the court in its analysis of statutory bars under 35 U.S.C. § 102(b).

Appeal Brief, page 11, (footnote omitted). This argument misapprehends the nature of appellate review. The record forwarded to an appellate tribunal contains numerous facts. However, not all facts contained in the record are relevant in deciding the issue framed and presented by the parties below. The question put squarely to the Board and the CCPA in LeGrice was whether a printed publication under § 102(b) must be enabling in the first instance, not how a printed publication can be considered enabled. The Board decided that a § 102(b) printed publication need not be enabled in the first instance. The CCPA reversed that decision, holding that a § 102(b) printed publication must be enabling. The question of how or in what manner a § 102(b) printed publication can be enabling was not presented to or decided by either tribunal. The examiner and Board could have presented a two tiered issue for review. First, whether a § 102(b) publication needs to be enabling in the first instance and second, if the first issue is answered in the affirmative, does the public availability of the plants provide the needed enablement. However neither the examiner nor the Board did so. Only the first issue was decided by the Board and CCPA.

We also note the examiner and appellant have discussed the relevance that a previous board decision, Ex parte Thomson, 24 USPQ2d 1618 (Bd. Pat. App. & Int. 1992) has on the facts of this case. Thomson was decided by a three member merits panel of the Board. At best the decision in Thomson constitutes the law of that case and would govern any further proceedings within the agency in regard to that patent application or its progeny. It is not controlling in this case. What is controlling in this case are the patent statutes and relevant precedent from the Federal Circuit and the CCPA. Thus we will not engage in a discussion of the facts or holdings of Thomson.

Appellant argues on page 15-17 of the Appeal Brief that:

An asexually reproduced plant is expected to have the same botanical characteristics as its parent plant. However, a mutation (spontaneous or otherwise) can cause an asexually reproduced plant to exhibit characteristics different from its parent plant. The characteristics of the plant described in EU 97/0980 are not identical to the characteristics specified in the claimed plant. EU 97/0950 simply does not contain sufficient information to indicate what particular variety is described therein, despite having the name 'Pendec'. As noted above, many pale pink geraniums could fit the description in EU 97/0950. Hence, the present application is more than just a better description of a plant described in EU 97/0950-- it is the definitive description of the variety named 'Pendec' claimed in the present application. The attempt to cast the botanical characteristics of the present invention as inherent properties of a vaguely described plant named 'Pendec' is an improper interpretation of and reliance on Donohue relating to the inherent properties of chemical compounds.

Appeal Brief, paragraph bridging pages 16-17.

We agree with appellant that the present application provides a better written description of Pendec than does EU 97/0950. However, that is beside the point in that neither written description enables one to recreate Pendec. What is significant is that appellant has not established the claimed Pendec differs from the Pendec described in EU 97/0950 and the Pendec which was publicly available in Germany more than one year prior to the filing date of this plant patent application.

In considering appellant's position in this appeal, we find it significant that the CCPA cast the test for an enabled printed publication under § 102(b) in terms of "possession of the invention" instead of using the "make and use" language found in the enablement requirement of 35 U.S.C. § 112, first paragraph. The ordinary and customary meaning of the word "possession" is "a possessing or being possessed; ownership, occupancy, hold, etc."<sup>4</sup> One can possess something such as a plant without knowing how to make it or for that matter how it was made. Again, how can one be any more in "possession" of a claimed invention than to be able to hold the claimed invention in one's hands as here? The undisputed facts in this case establish that the public and consequently those of skill in this art were put on notice of the existence of Pendec by way of the printed publication relied upon by the examiner and the public and those skilled in the art were put in possession of the claimed plant by the public availability of Pendec.

Our agreement with the examiner's position that the "possession" test of LeGrice is satisfied by physical possession of the claimed invention as opposed to having constructive possession by knowing how to "make" the claimed invention is consistent with the manner in which enablement questions have been treated in utility applications claiming inventions involving biological material. In In re Argoudelis, 434 F.2d 1390, 168 USPQ 99 (CCPA 1970), the claims under review were directed to new antibiotic compounds produced by a microorganism. It was conceded that the claimed antibiotic compounds could only be made if one had access to the microorganism starting material. Argoudelis at 1392, 168 USPQ at 100-101. However, as observed by the CCPA, one "cannot sufficiently disclose by written word how to obtain the

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<sup>4</sup> Webster's New World Dictionary of the American Language, Second College Edition, p. 1112 (The World Publishing Company 1972)

microorganism starting material from nature." Argoudelis at 1392, 168 USPQ at 101-102. As explained:

[A] unique aspect of using microorganisms as starting materials is that a sufficient description of how to obtain the microorganism from nature cannot be given. Such a description could only detail an experimental screening program similar to the screening programs followed in discovering the microorganism in the first instance. If the microorganism involved were of very common occurrence, it might be found in a relatively short time, but if it were not of common occurrence, it might not be found for a very long time, if found at all. The microorganism involved here, of course, was not known and available to the workers in the art since it was newly discovered by appellants.

Argoudelis at 1392, 168 USPQ at 102.

Given those circumstances where an applicant for a utility patent could not describe by way of words how to make a needed biological material, the CCPA determined that the applicant could deposit the needed biological material in a public depository under conditions assuring access by the public to the biological material upon issuance of a patent. Thus, such utility patents are considered enabled, not by the fact that the public can make or recreate the needed biological material, but by the fact that the public is given possession of the needed biological material upon issuance of the patent. Since the time of Argoudelis, the procedures for the deposit of biological material in order to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph, have been the subject of rule making by the USPTO and are now codified in 37 CFR §§ 1.801 - 1.809. 37 CFR § 1.802(b) reads:

Biological material need not be deposited unless access to such material is necessary for the satisfaction of the statutory requirements for patentability under 35 U.S.C. 112. If a deposit is necessary, it shall be acceptable if made in accordance with these regulations. Biological material need not be deposited, inter alia, if it is known and readily available to the public or can be made or isolated without undue experimentation. Once deposited in a depository complying with these regulations, a biological material will be considered to be readily available even though some requirement of law or regulation of the United States or

of the country in which the depository institution is located permits access to the material only under conditions imposed for safety, public health or similar reasons.

As seen, an applicant need not deposit needed biological material if that material is publically available or can be made or isolated. The deposit rules equate existing public availability of needed biological material, the ability of the public to make, recreate or re-isolate the material and deposit of the material with access to public upon issuance of a patent. Any of these three circumstances will satisfy the enablement requirement. It makes little sense to say that a utility patent is enabled by way of the public being able to physically possess needed biological material where written words do not suffice to instruct one of ordinary skill in the art how to make or recreate the material, yet say that a printed publication describing the existence of a plant is nonenabled even though the public can in similar manner "possess" the plant due to its public availability.

The public availability of Pendec in countries other than the United States does not negate its effect in enabling the printed publication relied upon by the examiner. A similar issue was considered in In re Metcalfe, 410 F.2d 1378, 161 USPQ 789 (CCPA 1969) in the context of whether claims pending in a utility application were enabled. One of the issues resolved in Metcalfe was whether pamphlets from Australian companies could be relied upon as evidence that the pending claims were enabled when it was not clear the pamphlets were available in the United States. The court stated "we are unaware of any authority holding that published material of the type under consideration must be from the United States. Section 112 simply requires that a disclosure of an invention enable any man skilled in the relevant art to make and use it. No mention of convenience is made; thus, even if the origin of the material is in

Australia, this is merely a matter of degree of convenience and not a matter of lack of availability." Metcalfe, at 1381, 161 USPQ at 791.

We think this principle applies equally to the present situation in considering whether the printed publication relied upon by the examiner is enabled. The public availability of Pendec in countries other than the United States is a matter of convenience, not access. The printed publication clause of § 102(b) is not limited to publications "in this country" as are the "on sale" and "public use" clauses. Since the printed publication clause of § 102(b) is not limited by location, we see no reason to geographically limit the evidence available to be used in determining whether a printed publication is enabled. In our view, description of a claimed plant in a printed publication more than one year prior to the filing date for a plant application patent in this country, coupled with the public availability of the plant in countries other than the United States creates a statutory bar to obtaining a plant patent on the plant.<sup>5</sup>

Appellant argues that asserting a PBR publication is enabling prior art alone or in combination with the sale or use outside the United States is inconsistent with the examination practice of requiring detailed botanical information in plant patent applications. Appeal Brief, page 18. It is not clear what point appellant is making here. Whether a specification of a plant patent application contains sufficient information to describe the plant in issue is separate and distinct from whether a prior art reference is

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<sup>5</sup> While not relied upon by appellant, we have reviewed In re Foster, 343 F.2d 980, 145 USPQ 166 (CCPA 1966), cert. denied, 383 U.S. 966 (1966) since the case also discusses the requirements of 35 U.S.C. § 102(b), albeit in a different context. In Foster, the court observed:

"[S]ince the purpose of [§ 102(b)] has always been to require filing of the application within the prescribed period after the public came into possession of the invention, we cannot see that it makes any difference how [it] came into such possession, whether by a public use, a sale, a single patent or publication, or by combination of one or more of the foregoing."

Foster, at 988, 145 USPQ at 173. In making this observation the court did not limit "public use" and "a sale" to those which occur in this country. While it is not clear from the opinion whether the court meant for those terms to be unlimited by geography, it is clear that a combination of events may be used to establish a § 102(b) bar.

enabling. The amount of description a specification need contain in a plant patent application in order to comply with the requirements of 35 U.S.C. § 162 is not before us for review in this appeal.

Appellant argues that the rejection in this case places the “foreign plant patent breeder at a distinct economic disadvantage.” Appeal Brief, pages 19-20. In considering this argument, we note our decision does not foreclose or prevent access to the United States patent system by a plant breeder, regardless of whether the breeder conducts his business in this country or in a country other than the United States. What our decision means is that plant breeders must file their plant patent applications in the United States in a more timely manner than apparently has been the practice. We find no legal impediment to plant breeders, including the present appellant, filing their plant patent applications in the United States within a year of describing their plant in a printed publication and providing access to the public to the plant overseas.

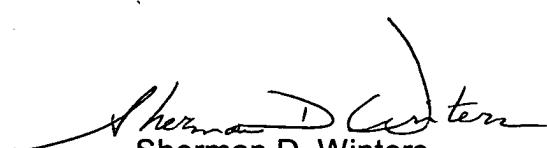
Appellant appears to be of the mind that plant breeders should be free to pursue legal protection of a plant in the countries other than the United States and in so doing provide public notice of the existence of a plant concurrent with making the plant available to the public in countries other than the United States by way of commercial sales or other avenues, yet be able to delay seeking patent protection in this country until they decide whether the plant is commercially important in this country. We have no doubt that many industries and inventors would find that set of circumstances desirable. However this is not what the patent statutes provide for in this country. The CCPA stated in LeGrice that the plant patent statutes, 35 U.S.C. §§ 161-164, provide a single exception to the other statutory requirements for granting of a patent. LeGrice at 933, 133 USPQ at 369 (“35 U.S.C. § 161 engrafts the Plant Patent Act onto the basic

patent law, which requires us to apply thereto all the rules, regulations and provisions of the basic patent law except that, by the express provision of 35 U.S.C. 162, a plant patent cannot be declared invalid if its description 'is as complete as is reasonably possible"). We do not find it appropriate to create another exception for appellant.

Nor do we find the argued cost burden to be unique to plant breeders. There are no doubt many industries and inventors faced with difficult decisions as to which inventions to seek patent protection. Such decisions are based in large part on, if not governed by, economic circumstances. It must be remembered that it was appellant's own actions which resulted in the printed publication that forms the basis for the present rejection and appellant's own actions which placed the claimed plant on sale overseas or otherwise made the plant publicly available in the relevant time frame. If appellant wanted the luxury of delaying his decision as to which plants should be protected by plant patents in the United States, appellant should have developed the present plant to the point of deciding whether it is commercially viable in this country without generating statutory bars under 35 U.S.C. § 102(b).

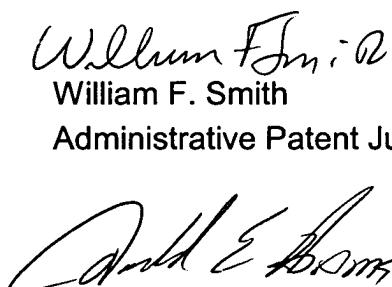
No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

  
Sherman D. Winters  
Administrative Patent Judge

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William F. Smith  
Administrative Patent Judge

Donald E. Adams  
Administrative Patent Judge

Appeal No. 2003-0841  
Application No. 09/664,247

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-FORM PTO-892 (REV. 3-78)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/1664,247	GROUP/ART UNIT 1600	ATTACHMENT TO PAPER NUMBER 23
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## NOTICE OF REFERENCES CITED

APPLICANT(S)  
Wilhelm Elsner

## U.S. PATENT DOCUMENTS

*	DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE IF APPROPRIATE
A						
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## FOREIGN PATENT DOCUMENTS

*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB-CLASS	PERTINENT SHTS. DWG	PP. SPEC.
L								
M								
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P								
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## OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)

R	Webster's New World Dictionary of the American Language Second College Edition, p. 1112 (The World Publishing Co. 1972)
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EXAMINER Decision by the Board	DATE 6/25/3
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\* A copy of this reference is not being furnished with this office action.  
(See Manual of Patent Examining Procedure, section 707.05 (a).)

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responsibilities, esp. one to which a person is appointed; job is now the common, comprehensive equivalent for any of the preceding terms.

**pos-i-tive** (päz'ə tiv) *adj.* [ME. *positif* < OFr. < L. *positivus* < *positus*: see POSITION] 1. formally or arbitrarily set; conventional; artificial /a positive law/ 2. definitely set; explicitly laid down; admitting of no question or modification; express; precise; specific /positive instructions/ 3. *a*) having the mind set or settled; confident; assured /a positive person/ *b*) overconfident or dogmatic 4. showing resolution or agreement; affirmative; certain /a positive answer/ 5. tending in the direction regarded as that of increase, progress, etc. /clockwise motion is positive/ 6. making a definite contribution; constructive /positive criticism/ 7. unrelated to anything else; independent of circumstances; absolute; unqualified 8. that has, or is considered as having, real existence in itself, not just in the absence of other attributes /a positive good/ 9. based, or asserted as based, on reality or facts /positive proof/ 10. concerned only with real things and experience; empirical; practical 11. [Colloq.] complete; downright; out-and-out /a positive fool/ 12. *Biol.* directed toward the source of a stimulus /positive tropism/ \*13. *Elec. a)* of positive electricity *b)* of generating, or charged with positive electricity *c)* having a deficiency of electrons 14. *Gram. a)* of an adjective or adverb in its simple, uninflected or unmodified form or degree; neither comparative nor superlative *b)* of this degree 15. *Math.* designating a quantity greater than zero, or one to be added; plus 16. *Med.* demonstrating or proving the presence or existence of a condition, symptoms, bacteria, etc. 17. *Photog.* with the lights and shades corresponding to those of the subject —*n.* something positive, as a degree, quality, condition, etc.; specif. *a)* the plate in a voltaic battery where the higher potential is *b)* *Gram.* the positive degree; also, a word or form in this degree *c)* *Math.* a quantity greater than zero, or one to be added; plus quantity *d)* *Photog.* a photographic print, or a film for use in a projector, on which light and shadow correspond to what they were in the original subject —*SYN.* see TRUE —*pos-i-tive-ly adv.* —*pos-i-tive-ness n.*

positive electricity the kind of electricity that predominates in a glass body after it has been rubbed with silk and has a deficiency of electrons

**pos-i-tiv-ism** (päz'ə tiv'iz'm) *n.* [Fr. *positivism* < *positif*] 1. the quality or state of being positive; certainty; assurance 2. overconfidence or dogmatism 3. a system of philosophy basing knowledge solely on data of sense experience; esp., a system of philosophy originated by Auguste Comte, based solely on observable scientific facts and their relations to each other; it rejects speculation about or search for ultimate origins —*pos-i-tiv-ist n., adj.* —*pos-i-tiv-ist'ic adj.*

\***pos-i-tron** (päz'ə trän') *n.* [POSI+TRON] the positive antiparticle of an electron, having approximately the same mass and magnitude of charge

\***pos-i-tron-i-um** (päz'ə trō'nē əm) *n.* [POSETRON + -IUM] a semistable atomic system formed of an electron and a positron before they interact to annihilate each other

**po-sol-o-gy** (pö sal'ə jé) *n.* [Fr. *posologie* < Gr. *posos*, how much (< IE. \*kwoHt-) < interrogative base \*kwo-, whence WHO, WHAT) + Fr. *logie*, LOGY] *Med.* the scientific study of drug dosages

**poss.** 1. possession 2. possessive 3. possibly

**posse** (pöz') *n.* [ML; short for *posse comitatus*, power of the county < L. *posse*, to be able (see POTENT) + *comitatus*, county < comes, a COUNTRY] 1. *a)* the body of men liable to be summoned by a sheriff to assist him in keeping the peace, etc. *b)* a band of men, usually armed, so summoned In full: *posse comitatus* (käm'ə tä'təs) 2. any body of men armed with legal authority —*in posse* potentially

**pos-sess** (pa zës') *vt.* [LME. < MFr. *possessier* < L. *possessus*, pp. of *possidere*, to possess < *pos-*, contr. < *pots*, able (see POTENT) + *sedere*, to SIT] 1. to hold as property or occupy in person; have as something that belongs to one; own 2. to have as an attribute, quality, faculty, etc. /to possess wisdom/ 3. to have knowledge or mastery of (a language, etc.) 4. to gain strong influence or control over; dominate (*possessed* by an idea) 5. to keep control over or maintain (oneself; one's mind, etc.) 6. to manage; to have sexual intercourse with (a woman) 7. to put (someone) in possession of property, facts, etc.; cause to have something specified (usually with of) 8. [Archaic] to seize; win; gain —*SYN.* see HAVE —*pos-sess'or n.*

**pos-sess-ed** (pä zëst') *adj.* 1. owned 2. controlled by an emotion or as if by an evil spirit; crazed; mad 3. same as SELF-POSSESSED —possessed in possession of

**pos-ses-sion** (pä zësh'ən) *n.* [ME. < OFr. < L. *possessio*] 1. a possessing or being possessed; ownership, occupancy, hold, etc. 2. anything possessed 3. [*pl.*] property; wealth 4. territory ruled by an outside country 5. control of oneself; rare except in SELF-POSSESSION 6. *Sports* actual control of the ball or puck in play —*pos-ses-sion-al adj.*

**pos-ses-sive** (pä zëst'iv) *adj.* [L. *possessivus*] 1. of possession, or ownership 2. showing, or characterized by a desire for, possession /a possessive person/ 3. *Gram.* designating or of a case, form, or construction expressing possession or some like relationship; in English, this is expressed *a)* by a final s (for nouns and some pronouns) preceded or followed by an apostrophe, or sometimes by an apostrophe only, following a final s sound (Ex.: *John's book*; *men's lives*, *boys' games*, *conscience's sake*) *b)* by change of form of pronouns (Ex.: *my*, *mine*, *your*, *yours*, *his*, *her*, *hers*, *its*, *our*, *ours*, *their*, *theirs*, *whose*) *c)* by preceding a form without the possessive ending (Ex.: *lives of men*) or preceding a form in the possessive case (Ex.: *a play of Shakespeare's*, a friend of *mine* — called a double possessive; cf. GENITIVE —*n. Gram.* 1. the possessive case 2. a possessive form or construction —*pos-ses-sive-ly adv.* —*pos-ses-sive-ness n.*

**pos-ses-so-ry** (-ərē) *adj.* 1. of, being, or characterizing a possessor 2. of or based upon possession

**pos-set** (päz'it) *n.* [ME. < ?] a hot drink made of milk curdled with ale, wine, etc., usually spiced

**pos-si-bil-i-ty** (päz'ə bil'i tē) *n.* [ME. *possibilitate* < LL. *possibilitas*] 1. the quality or condition of being possible 2. pl. -ties something that is possible

**pos-si-ble** (päz'ə b'l) *adj.* [ME. < OFr. < L. *possibilis* < *posse*, to be able; see POTENT] 1. that can be; capable of existing 2. that can be in the future; that may, or may not happen 3. that can be done, known, acquired, selected, used, etc., depending on circumstances /a possible candidate/ 4. that may be done; permissible 5. that may be a fact or the truth 6. [Colloq.] that can be put up with; tolerable

**SYN.** —possible is used of anything that may exist, occur, be done, etc., depending on circumstances /a possible solution to a problem/; practicable applies to that which can readily be effected under the prevailing conditions or by the means available /a practicable plan/; feasible is used of that which is likely to be carried through to a successful conclusion and, hence, connotes the desirability of doing so /a feasible enterprise/ See also PROBABLE

**pos-si-bly** (bilē) *adv.* 1. by any possible means; in any case (it can't possibly work) 2. by some possibility; perhaps; maybe /it may possibly be so/

\***pos-sum** (päz'əm) *n.* [Colloq.] same as OPOSSUM —play possum, to pretend to be asleep, dead, ill, unaware, etc. opossums feign death when attacked

**post** (pöst) *n.* [ME. < OE. akin to G. *posten*] WGmc loanword < L. *postis*, a post, doorman; < \*por-tis projection < \*por-, akin to FOR + base of *stare*, to STAND 1. a piece of wood, metal, etc., usually long and square, cylindrical, set upright to support a building, sign, fence, etc. 2. anything like this in shape or purpose 3. any place originally marked by or associated with a post, as the starting point of a horse race —*vt.* 1. to put up (a poster, notice, etc.) on (a wall, post, etc.); placard 2. to announce, publicize, or advertise by posting notices, signs, etc. /put a reward/ 3. to warn persons against trespassing on (grounds, etc.) by posted notices 4. to put (a name) on a posted or published list 5. to denounce by a public notice 6. to publish the name of (a ship) as lost or missing 7. *Sports* to record (a specified score)

**post**\* (pöst) *n.* [Fr. *poste* < It. *posta* < VL. \*postum, contr. < L. *postum*, neut. pp. of *ponere*, to place; see POSITION] 1. the place where a soldier, guard, etc. is stationed 2. *a)* a place where a body of troops is stationed; camp *b)* the troops at such a place; garrison *c)* a local unit of a veterans' organization 4. a place where a person or group is stationed, as at a machine, a trading booth, on a stock exchange floor, etc. 5. a position, job, or duty to which a person is assigned or appointed *d)* clipped form of TRADING POST 7. Brit. Army either of two bugle calls (first post and last post) sounded at tattoo —*vt.* 1. to station at or assign to a post 2. [Brit.] to appoint to a military or naval command *3)* to put up or deposit (a bond, etc.) —*SYN.* see POSITION

**post\*** (pöst) *n.* [Fr. *poste* < It. *posta*, orig. a station, fem. of *posta*; see prec.] 1. orig. any of a number of riders or runners posted at intervals to carry mail, etc. in relay along a route or, later, a person so posted to provide fresh horses for a courier 2. formerly, *a)* a postrider or courier *b)* a stage of a post route *c)* a post horse or a station for one *d)* a packet (ship) 3. [Chiefly Brit.] *a)* the mail *b)* post office *c)* a mailbox 4. [Dial.] a postman —*vt.* 1. formerly, to travel in posts or stages 2. to travel fast; hasten 3. to rise and sink back in a saddle in rhythm with the horse's trot —*vt.* 1. orig. *a)* to send by or as by post *b)* to hasten 2. [Chiefly Brit.] to mail; put in a mailbox, etc. *3)* to inform, as of events; usually, in the passive voice /keep me posted/ 4. *Bookkeeping* *a)* to transfer (an item) from a daybook, etc. to the ledger *b)* to enter in the correct form and place *c)* to enter all necessary items in a ledger, etc. —*adv.* 1. by post or postal courier 2. speedily

**post-** (pöst) [L. < *post*, behind, after < \*posta < IE. \*pos- after (prob. < base \*apo-, away, whence L. *ab*), whence Gr. dial. *pos*, at] a prefix meaning: 1. after in time, later (than), following /postgraduate, postglacial/ 2. after in space, behind /postaxial/

**Post** (pöst) Emily (Mrs. Edwin Main Post; born Emily Price) 1873–1960; U.S. writer on etiquette

**post-age** (pöz'tij) *n.* [POST + -AGE] the amount charged for mailing a letter or package, esp. as represented by stamps or indicia

\***postage meter** a machine that prints indicia on mail indicating that postage has been paid; it records the number of pieces processed and the cost of postage